

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1948

No. 355

THE PEOPLE OF THE STATE OF CALIFORNIA,
PETITIONER,

vs.

BERL B. ZOOK AND WILMER K. CRAIG

ON WRIT OF CERTIORARI TO THE APPELLATE DEPARTMENT OF THE
SUPERIOR COURT OF LOS ANGELES COUNTY, STATE OF CALI-
FORNIA

PETITION FOR CERTIORARI FILED OCTOBER 16, 1948.

CERTIORARI GRANTED DECEMBER 6, 1948.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948

No.

THE PEOPLE OF THE STATE OF CALIFORNIA,
PETITIONER

vs.

BERL B. ZOOK AND WILMER K. CRAIG

ON PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE DEPARTMENT OF THE SUPERIOR COURT OF LOS ANGELES COUNTY, STATE OF CALIFORNIA

INDEX

	Original	Print
Record from Municipal Court of City of Los Angeles.	1	1
Notice of appeal to Superior Court.	1	1
Complaint.	3	2
Demurrer to complaint.	7	3
Points and authorities.	9	4
Affidavit of service.	18	9
Transcript of docket.	22	10
Statement on appeal.	29	14
Order settling statement on appeal.	36	18
Affidavit of service.	36	19
Proceedings in Appellate Department of Superior Court of Los Angeles County.	38	19
Opinion, Shaw, J.	38	20
Judgment.	47	24
Petition for rehearing.	49	25
Affidavit of service.	55	28
Order denying rehearing.	57	29
Certificates of Judges of the Court.	58	30
Precept for record.	63	32
Order staying remittitur and execution.	65	33
Clerk's certificate (omitted in printing)	67	
Order following certiorari.	68	33

**IN THE MUNICIPAL COURT OF THE CITY OF LOS
ANGELES, COUNTY OF LOS ANGELES, STATE OF
CALIFORNIA**

No. 61797

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,

vs.

BERL B. ZOOK AND WILMER K. CRAIG, Defendants

NOTICE OF APPEAL—Filed April 6, 1948

To the Above Named Court and to Urban F. Emme, Clerk
Thereof:

Notice is hereby given that Berl B. Zook and Wilmer K. Craig, defendants in the above entitled and numbered action, and each of them, intend to and hereby do appeal to the Superior Court of the State of California, in and for the County of Los Angeles, from that certain Final Judgment of Conviction made and entered in the record of said case on the [24th]* 6th day of [March,]* April, 1948, and from the Order of the above entitled Court denying said defendants' motion in arrest of judgment made and entered in the record of said case on the [24th]* 6th day of [March,]* April, 1948, and from the whole of each thereof.

Dated at Los Angeles, California, this 24th day of March, 1948.

DeWitt Morgan Manning, F. W. Turcotte, By F. W. Turcotte, Attorneys for Defendants, Berl B. Zook and Wilmer K. Craig.

Appeal Bond set at \$500.00 each.

WALTERS, Judge.

[fol. 2] [Endorsed:] No. 61797. Received copy of the within Notice of Appeal this 24th day of March, 1948. —, Attorney for Plaintiff.

[File endorsement omitted.]

* Matter inclosed in brackets struck out in copy.

[Title omitted]

COMPLAINT—Filed January 8, 1948

Personally appeared before me, this 8th day of January, 1948, E. W. Hively of Los Angeles City, who, first being duly sworn, complains and says: That on or about the 7th day of January, 1948, at and in Los Angeles City, in the County of Los Angeles, State of California, a misdemeanor, to-wit: Violation of Section 654.1 of the Penal Code of the State of California was committed by Berl B. Zook and Wilmer K. Craig (whose true name to affiant is unknown), who at the time and place last aforesaid, did wilfully and unlawfully, at 925 West 7th Street, in the City of Los Angeles, sell and offer to sell, negotiated, provided and arranged for, and advertised and held themselves out as persons who sell and offer to sell and negotiate, provide and arrange for the transportation of persons on an individual fare basis over the public highways of the State of California by a carrier other than a carrier having a valid and existing certificate of convenience and necessity or other [fol. 4] valid and existing permit from the Public Utilities Commission of the State of California or from the Interstate Commerce Commission of the United States authorizing such holder of a certificate or other permit to provide such transportation of passengers in that the said Berl B. Zook and Wilmer K. Craig, held themselves out as persons willing to sell and negotiate for the above described transportation and sold to James A. Moss and Dorothy Mae Elbag, transportation from Los Angeles to Fort Worth, Texas, over a carrier which was not licensed in any manner by the State of California or the Interstate Commerce Commission to carry passengers for compensation or hire and negotiated for the sale of such transportation and arranged for such transportation.

All of which is contrary to the form of the Statute in such cases made and provided, and against the peace and dignity of the People of the State of California. Said Complainant therefore prays that a warrant may be issued for the arrest of said Defendant ——— (whose true name ——— to affiant is unknown) and that ——— he ——— may be dealt with according to law.

Subscribed and sworn to before me this 8th day of
January, 1948, E. W. Hively,
Urban F. Emma, Clerk of the Municipal Court of
Los Angeles City, in said County and State. By
G. Lander (Seal.) Deputy Clerk.

[fol. 5] [File endorsement omitted]

Issued by Ray L. Chesebro, City Attorney
By Boyd A. Taylor, Deputy City Attorney.

[fol. 6] Clerk's Certificate to foregoing paper omitted in
printing.

[fol. 7] IN THE MUNICIPAL COURT OF THE CITY OF LOS ANGELES

[Title omitted]

No. 61797.

DEMURRER TO COMPLAINT—Filed January 22, 1948.

Comes now the defendants, Berl B. Zook and Wilmer K.
Craig, and each of them, and demur to the complaint on file
herein on the grounds:

I

That it appears upon the face of the complaint that the
[fol. 8] Court has no jurisdiction of the offense charged
therein in that it is alleged defendants sold and offered for
sale, negotiated, provided and arranged for and advertised
and held themselves out as persons who sold and offered to
sell and negotiate, provide and arrange for the transporta-
tion of persons on an individual fare basis over the public
highways of the State of California, viz.:

from Los Angeles, California, to Ft. Worth, Texas, over a
carrier which was not licensed in any manner by the State
of California or the Interstate Commerce Commission to
carry passengers for compensation or hire, all of which is
interstate commerce and within the exclusive jurisdiction
of the federal courts.

II

That it appears upon the face of the complaint that the
facts stated do not constitute a public offense against the
laws of the State of California in that it is alleged in sub-
stance that the transportation offered to be sold and sold

by the defendants was interstate commerce, and hence Section 654.1, California Penal Code, had, and now has, no application.

Wherefore, the defendants, Berl B. Zook and Wilmer K. Craig and each of them, pray that the demurrer be sustained without leave to amend and that a judgment dismissing the action be entered, and that the bail of the defendant, Wilmer K. Craig, be exonerated, and for such other and further [fol. 9] order or orders as to the Court may seem just and equitable.

DeWitt Morgan Manning, F. W. Turcotte, Attorneys
for Defendants.

POINTS AND AUTHORITIES

Point I

A demurrer to a criminal complaint charging a misdemeanor for reasons that (a) the court has no jurisdiction of the offense charged therein, and (b) that the facts stated do not constitute a public offense, is authorized by statute in this state.

Section 1428.1 and 1461a of the California Penal Code.

Point II

Congress has enacted legislation that covers the field and regulates the same acts charged in the instant complaint.

In 1935 Congress enacted Part II of the Interstate Commerce Act, the pertinent provisions of which are as follows:

"The provisions of this Part apply to the transportation of passengers or property by motor carriers engaged in interstate or foreign commerce *and to the procurement of* [fol. 10] *and the provision of facilities for such transportation, and the regulation of such transportation, and of the procurement thereof,* and the provision of facilities therefor is hereby vested in the Interstate Commerce Commission." Emphasis supplied. Sec. 302(a) (U. S. C. A. numbering.)

"Nothing in this part, . . . shall be construed to include . . . (7a) the transportation of persons or property by motor vehicle when incidental to transportation by aircraft; nor, unless and to the extent that the Commission shall from time to time find that such application is necessary to carry out the national transportation policy

declared in this Act, shall the provisions of this part, apply to: * * * or (9) the casual, occasional or reciprocal transportation of passengers or property by motor vehicle in interstate or foreign commerce for compensation by any person not engaged in transportation by motor vehicle as a regular occupation or business, unless, in the case of transportation of passengers, such transportation is sold or offered for sale, or provided or procured or furnished or arranged for, by broker, or by any other person who sells or offers for sale transportation furnished by persons lawfully engaged in the transportation of passengers by motor vehicle under a certificate or permit issued under this part or under a pending application for such [fol. 11] certificate or permit." Sec. 303(b).

"The term 'interstate commerce' means commerce between any place in a state and any place in another state * * * " Sec. 303(a) (10).

"The term 'Commission' means the Interstate Commerce Commission." Sec. 303(a) (3).

"The term 'motor carrier' includes both a common carrier by motor vehicle and a contract carrier by motor vehicle." Sec. 303(a) (16).

"The term 'broker' means any person not included in the term 'motor carrier' and not a bona fide employee or agent of any such carrier, who or which, as principal or agent, sells or offers for sale any transportation subject to this part, or negotiates for or holds himself or itself out by solicitation, advertisements or otherwise, as one who sells, provides, furnishes, contracts or arranges for such transportation." Sec. 303(a) (18).

"No person shall for compensation, sell or offer for sale transportation *subject to this part* or shall make any contract, agreement or arrangement to provide, procure, furnish or arrange for such transportation, or shall hold himself or itself out by advertisement, solicitation or otherwise, as one who sells, provides, procures, contracts or arranges for such transportation, unless such person holds a broker's license issued by the Commission to engage in such transactions: * * * In the execution of any con- [fol. 12] tract, agreement or arrangement to sell, provide, procure, furnish or arrange for such transportation, it shall be unlawful for such person to employ any carrier by motor vehicle who or which is not the lawful holder of an effective

"Any person knowingly and willfully violating any provision of this part, or any rule, regulation, requirement or order thereunder . . . for which a penalty is not otherwise herein provided, shall upon conviction thereof, be fined not more than \$100 for the first offense and not more than \$500 for any subsequent offense. Each day of such violation shall constitute a separate offense." Sec. 302(a).

"If any * * * broker operates in violation of any provision of this part * * *, or any rule, regulation, requirement or order thereunder * * *, the Commission or its duly authorized agent may apply to the District Court of the United States for any district where such * * * broker operates, for the enforcement of such provision of this part, or of such rule, regulation, requirement, order, term or condition; and such court shall have jurisdiction to enforce obedience thereto by a writ of injunction or by other process, mandatory or otherwise, restraining such * * * broker, his or its officers, agents, employees and representatives from further violation of such provision of this part or of such rule, regulation, requirement, order, term or condition, and enjoining upon it or them obedience thereto." Sec. 322(b)(c)

About 1940 the Interstate Commerce Commission, pursuant to the provision of Section 303(b) USCA, instituted an investigation Ex Parte M.C. No. 35, to determine whether or not the exemption of the casual, occasional or reciprocal transportation of passengers or property by motor vehicle in interstate or foreign commerce for compensation by any person not engaged in transportation by motor vehicle as a regular occupation or business should be removed.

On March 21, 1942, the Interstate Commerce Commission duly made and entered its decision and order in Ex Parte M.C. No. 35, 33-Motor Carrier Cases 69, 3 Fed. Carrier Cases, 202, in which decision the Commission, among other things, said:

"Since prior to the passage of Part II of the Act, persons have been traveling between points in the United States under the so-called 'share expense' arrangements in automobiles operated by persons not authorized either by the Commission or State regulatory bodies to transport passen-

gers as motor common or contract carriers. The 'share expense' plan purports to be an arrangement whereby an automobile operator traveling primarily for some purpose other than that of transporting passengers for compensation carries passengers who share with him the expense [fol. 14] of operation of the vehicle used. Such operators ostensibly engage in such transportation only casually or occasionally or under reciprocal arrangements. In connection with this type of travel, there has developed a business known as that of a travel bureau. Numerous individuals or partnerships operating under trade names, usually including the words 'Travel Bureau,' are engaged in this business whereby, for compensation, they bring together such automobile operators and prospective passengers and arrange, or enable such operators and passengers to arrange for travel in this manner. For this service fees or commissions are collected from either the automobile operator or the passenger and in some cases from both.

"* * *. The travel bureau business is quite extensive in many cities, particularly, those in the western and southwestern states, notable at Kansas City, Mo., Wichita, Kans., Oklahoma City and Tulsa, Okla., Dallas, Ft. Worth, San Antonio, Houston and El Paso, Tex., Los Angeles and San Francisco, Calif., Portland, Oreg., Seattle, Wash., and Denver, Colo. * * *

"The Commission, Division 5, has held in several proceedings that the partial exemption in Section 203(b)(9) of the act of the casual, occasional and reciprocal transportation of passengers not performed as a regular business has the effect of exempting from all provisions of the act [fol. 15] those who make a business of arranging this type of transportation exclusively, and has denied licenses as brokers to applicants seeking authority to arrange for such transportation.

"* * *. Under the present exemption, the Commission cannot fully regulate such transportation to the end that travelers are adequately protected or require travel bureaus arranging such transportation to provide financial responsibility by filing a bond or other security such as required from brokers arranging for transportation by motor carriers operating under certificates or permits. * * *. We find that in order to carry out the national transportation policy declared in the act, the exemption of casual, occasional or reciprocal transportation of passengers by motor

vehicle in interstate or foreign commerce for compensation as provided in Section 203(b)(9) of the act should be removed to the extent necessary so as to make applicable all provisions of the Act to such transportation when sold, offered for sale, provided, procured, furnished or arranged for by any person who sells, offers for sale, provides, furnishes, contracts or arranges for such transportation for compensation or as a regular occupation or business."

The Interstate Commerce Commission decision and order in Ex Parte M.C. No. 35, supra, had the force and effect of making the transportation of passengers by motor vehicle [fol. 16] in interstate commerce for compensation subject to all provisions of Part II of the Interstate Commerce Act, whenever and wherever such transportation is sold, offered for sale, provided, procured, furnished or arranged for by any person who sells, offers for sale, provides, furnishes, contracts or arranges for such transportation for compensation or as a regular occupation or business.

This order removed the exemption theretofore existing and made all the provisions of Part II of the Interstate Commerce Act applicable to the furnishing of such transportation as that with which we are here concerned.

People v. Van Horn, 76 Cal. App. 2nd, 753, 756.

Point III

Under the Commerce clause of the United States Constitution the Congress of the United States is granted the exclusive power to regulate interstate commerce.

Donnelly v. Southern Pacific Co., 18 Cal. 2d, 863, 867;
Southern Ry. v. Railroad Commission of Indiana,
236 U. S. 439;
Southern Express Co. v. Byers, 240 U. S. 612.

Point IV

The Federal Government has exclusive jurisdiction of the subject matter of this case and therefore the exclusive power to punish.

[fol. 17] Sou. Ry. Co. v. Railroad Commission of
Indiana, 236 U. S. 439, 445, 446;

People v. Edmondson, Appellate Department Los
Angeles Superior Court No. CRA 2160;

People v. Joseph Stephens, Los Angeles Municipal

Court No. 26033, October 3, 1944 (Eugene P. Fay, Judge):

Respectfully submitted, DeWitt Morgan Manning,
F. W. Turcotte, Attorneys for Defendants.

[File endorsement omitted.]

[fol. 18] (AFFIDAVIT OF SERVICE BY MAIL—1013A, C. C. P.)

STATE OF CALIFORNIA,

County of Los Angeles, ss:

Clara V. Smith being first duly sworn, says: That affiant is a citizen of the United States and a resident of the county of Los Angeles; that affiant is over the age of eighteen years and is not a party to the within above entitled action; that affiant's business address is 656 S. Los Angeles St., Los Angeles 14, California, that on the 21st day of January, 1948, affiant served the within Demurrer to Complaint on the Plaintiff in said action, by placing a true copy thereof in an envelope addressed to the attorney of record for said plaintiff at the office address of said attorney, as follows: "Mr. John L. Bland, Deputy City Attorney, 400 City Hall, Los Angeles 12, California"; and by then sealing said envelope and depositing the same, with postage thereon fully prepaid, in the United States Post Office at Los Angeles, California, where is located the office of the attorney for the person by and for whom said service was made.

That there is delivery service by the United States mail at the place so addressed and ** there is a regular communication by mail between the place of mailing and the place so addressed.

[[fols. 19-21] Subscribed and sworn to before me this 21st day of January, 1948. Eileen Y. Owens, Clara V. Smith, Notary Public in and for the

* Here quote from envelope name and address of addressee.

** When the letter is addressed to a post office other than "Los Angeles" strike out "and"; when addressed to "Los Angeles," strike out "or."

County of Los Angeles, State of California.
(Seal)

Clerk's Certificate to foregoing papers omitted in printing.

[fol. 22] IN MUNICIPAL COURT OF CITY OF LOS ANGELES

[Title omitted]

TRANSCRIPT OF DOCKET

Jan. 7, 1948

\$500 Surety Bond filed as to Craig.

Jan. 8, 1948

Complaint filed sworn to by E. W. Hively charging the Defendants with having on January 7, 1948 at Los Angeles City, in the County of Los Angeles, State of California, committed a misdemeanor, to wit: Violation Section 654.1 Penal Code.

Jan. 8, 1948

Cause called. Judge Louis W. Kaufman presiding. Both parties ready. People represented by Victor Gibborn, Deputy City Attorney. Defendant Craig represented by Paul T. Lewis.

Defendant Craig in court, duly arraigned, informed of the charge against him and of his legal rights. Defendant gives true name as charged.

Cause continued to January 20, 1948, 9:30 A. M. for plea as to Wilmer K. Craig.

[fol. 23] Bail up to stand.

Bert B. Zook not in court for arraignment. Warrant issued. Bail fixed in the sum of \$500 as to Zook.

Jan. 9, 1948

Cause called. Judge Kaufman presiding. Both parties ready. People represented by Victor Gibborn, Deputy City Attorney. Defendant represented by Paul C. Lewis.

Defendant Zook in court, duly arraigned, informed of the charge against him and of his legal rights. Defendant

gives true name as charged and asks time to plead. Ordered to appear and plea January 20, 1948 at 9:30 A. M.

Defendant Zook released on his own recognizance. Warrant recalled on Zook.

Jan. 20, 1948

Cause called. Judge Kaufman presiding. Both parties ready. People represented by V. Clibborn, Deputy City Attorney. Defendant in court and represented by F. W. Turcotte.

Cause continued to January 30, 1948, 2 P. M. to file demurrer.

Bail up to stand as to Craig. Defendant Zook released on his own recognizance.

Jan. 22, 1948

Demurrer filed.

Jan. 30, 1948

Cause called. Judge Louis W. Kaufman presiding. Both [fol. 24] parties ready. People represented by John Bland, Deputy City Attorney. Defendants represented by D. W. Manning for Zook, and F. W. Turcotte for Craig.

Hearing on Demurrer. Demurrer overruled.

Defendants each in court, duly arraigned, informed of the charge against him and of his legal rights. Defendants each gives his true name as charged and each enters his plea of not guilty of the offense charged.

Defendants with counsel in open court each personally demands Jury Trial.

Jury Trial set for March 16, 1948 at 9:30 A. M. in Division 7.

Defendants personally waive statutory time for Trial.

Feb. 18, 1948

In the following case Charles W. Lunsford, reporter is ordered to take down proceedings as provided by law.

Cause called. Judge Elmer D. Doyle presiding. Both parties ready. People represented by Ralph Ringwald, Deputy City Attorney. Defendant in court and represented by D. W. Manning.

Cause continued to March 3, 1948, 9:30 A. M. on motion of Attorney for Defendant.

Mar. 3, 1948

In the following case S. T. Trainor, reporter is ordered to take down proceedings as provided by law.

Cause called. Judge Doyle presiding. Both parties [fol. 25] ready. People represented by R. Ringwald, Deputy City Attorney. Defendants in court and represented by D. Manning and F. W. Turcotte.

Defendants with counsel in open court each personally waive Jury Trial.

Transferred to Division 15 for trial.

Mar. 3, 1948

In the following case W. Weigel, reporter is ordered to take down proceedings as provided by law.

Cause called. Judge Walters presiding. Both parties ready. People represented by John Bland, Deputy City Attorney. Defendants in court and represented by D. W. Manning and F. W. Turcotte.

Upon stipulation of all parties cause is submitted.

Defendants adjudged guilty of the offense as charged.

Motion of Defendants in arrest of judgment. Motion argued. Motion submitted.

Defendants waive time of sentence.

Cause continued to March 24, 1948, 10 A. M. Bail up to stand.

Mar. 24, 1948

In the following case Helen Roberts, reporter is ordered to take down proceedings as provided by law.

Cause called. Judge B. J. Walters presiding. Both parties ready. People represented by W. C. Allen, Deputy City Attorney. Defendants in court and represented by [fol. 26] DeWitt H. Manning and F. W. Turcotte.

Motion of Defendants in arrest of judgment.

Cause continued to April 6, 1948, 10 A. M. for further hearing on motion.

Both Defendants personally consent to such continuance.

Apr. 6, 1948

In the following case Robert Doidge, reporter is ordered to take down proceedings as provided by law.

Cause called. Judge Walters presiding. Both parties ready. People represented by P. E. Grey, Deputy City At-

torney. Defendants in court and represented by DeWitt H. Manning.

Motion of Defendants in arrest of judgment. Motion denied.

Defendants waive time of sentence.

Defendants in court and having been duly arraigned for judgment and there being no legal cause why sentence should not be pronounced. Whereupon it is ordered and adjudged by the Court that for the said offense Violation of Section 654.1 Penal Code the said Berl B. Zook and Wilmer K. Craig be fined in the sum of Two Hundred Fifty dollars and that in default of the payment of said fine on or before 5 o'clock P. M. of April 6, 1948 the said Berl B. Zook and Wilmer K. Craig be imprisoned in the City Jail of said Los Angeles city in the proportion of one days imprisonment for each and every 2 dollars of said fines until the said fines be wholly satisfied, not exceeding 125 days, and [fol. 27] that the Defendants be discharged on payment of such portion of said fine as shall not have been satisfied by imprisonment at the rate above prescribed.

Notice on Appeal filed as to each Defendant. Bond on Appeal set at \$500 each.

Defendants committed.

Bail ordered exonerated as to Craig.

Apr. 6, 1948

\$500 Surety Appeal Bond filed as to each Defendant.

Apr. 8, 1948

Proposed Statement on Appeal filed with affidavit of service by mail.

Apr. 14, 1948

Waiver of time in which to file Amendments to Proposed Statement on Appeal and stipulation for settlement of Statement filed.

Apr. 16, 1948

Judge Byron J. Walters presiding.

Engrossed Statement on Appeal signed, certified and allowed.

Apr. 20, 1948

Files on Appeal transmitted to Appellate Department, Superior Court.

Apr. 28, 1948

Order for Court Reporter to prepare Transcript and payment for same filed.

[fol. 28]

May 12, 1948

Reporter's Transcript filed and given to John L. Bland, Deputy City Attorney for reference.

Aug. 3, 1948

Copy of Notice of Intention to Apply to the United States Supreme Court for Writ of Certiorari. Order staying remittitur and execution to October 21, 1948.

Præcipe for record filed.

Clerk's Certificate to foregoing paper omitted in printing.

[fol. 29] IN THE MUNICIPAL COURT OF THE CITY OF LOS ANGELES

[Title omitted.]

ENGROSSED STATEMENT ON APPEAL—Filed April 8, 1948

Be It Remembered, that on the 8th day of January, 1948, a complaint was filed in the above entitled court, charging defendants and appellants Berl B. Zook and Wilmer K. Craig with the commission of a misdemeanor, to wit, violation of Section 654.1 of the Penal Code of the State of California. Said violation was alleged to have occurred on or about the 7th day of January, 1948.

Thereafter said defendants demurred to the said complaint upon the grounds that it appears upon the face of the complaint that the court has no jurisdiction of the offense charged therein in that it is alleged defendants sold and offered for sale, negotiated, provided and arranged for and advertised and held themselves out as persons who sold and offered to sell and negotiate, provide and arrange for the transportation of persons on an individual fare basis over the public highways of the State of California, viz., from Los Angeles, California to Fort Worth, Texas, over a carrier which was not licensed in any manner by the State of [fol. 30] California or the Interstate Commerce Commission to carry passengers for compensation or hire, all of which

is interstate commerce and within the exclusive jurisdiction of the federal courts; and upon the further ground that it appears upon the face of the complaint that the facts stated do not constitute a public offense against the laws of the State of California in that it is alleged in substance that the transportation offered to be sold and sold by the defendants was interstate commerce, and hence Section 654.1 of the California Penal Code had, and now has, no application.

Said demurrer thereafter was duly argued in Division 30 of the above entitled court, Honorable Louis W. Kaufman, Judge, presiding, on the 30th day of January, 1948. John L. Bland, Esq., Deputy City Attorney, appearing as counsel for the People, and Messrs. F. W. Turcotte and DeWitt Morgan Manning appearing as counsel for defendants, and thereupon the said demurrer was overruled. The defendants on the said day were duly arraigned, entered a plea of not guilty, and demanded a jury trial. The case was thereupon set down for trial by jury on March 16, 1948. That thereafter, on the 18th day of February, 1948, said defendants by and through their said counsel moved the above entitled court, in Division 7 thereof, to advance the trial of said action to March 3, 1948, which motion was thereupon granted.

Thereafter, on March 3, 1948, the defendants and their [fol. 31] said counsel appeared in Division 7 of the said above entitled court, together with John L. Bland, Esq., Deputy City Attorney, appearing for the People. That on said day the said matter was assigned to Division 15 of the said Municipal Court, Honorable Byron J. Walters, Judge, presiding, for trial, defendants waiving a jury trial.

Thereupon, on the same date, March 3, 1948, counsel for the People and defendants presented to the court and filed with the Clerk thereof a document entitled Stipulation of Facts, which document is in fact a stipulation of facts entered into by and between the parties to the above entitled matter. That the said Stipulation of Facts, exclusive of the heading and signatures thereon, was as follows:

"It is agreed by and between the parties hereto, through their respective attorneys, that this cause shall be heard and determined by the above-entitled Court solely on the following agreed statement of facts:

"The defendants, Berl B. Zook and Wilmer K. Craig, were on the 7th day of January, 1948, and for some

time prior thereto had been engaged in the business of making arrangements to provide, procure and furnish transportation for prospective travellers, traveling or desiring to travel from Los Angeles, California, to points in the state of Texas, including Ft. Worth, Texas, via private automobiles operated by casual, [fol. 32] occasional and reciprocal car operators in interstate commerce for compensation, such car operators being persons not engaged in transportation by motor vehicles as a regular occupation or business; that on said 7th day of January, 1948, the defendants, Berl B. Zook and Wilmer E. Craig at 925 West 7th Street, in the City of Los Angeles, County of Los Angeles, State of California, did sell, negotiate, provide and arrange for the transportation of two persons on an individual fare basis by a carrier other than a carrier having a valid and existing certificate of public convenience and necessity or other valid or existing permit from the Public Utilities Commission of the State of California, or from the Interstate Commerce Commission of the United States authorizing such holder of a certificate or other permit to provide such transportation of passengers, said transportation to take place over the public highways of the State of California from Los Angeles, California, to the Arizona state line as a part of an interstate trip, in that said Berl B. Zook and Wilmer K. Craig did on said 7th day of January, 1948, at 925 West 7th Street, Los Angeles, California, hold themselves out as persons willing to sell and negotiate for the furnishing of interstate transportation by such casual, occasional and reciprocal interstate car operator and did sell to James A. Moss and Dorothy Mae Ellbag such transportation from Los Angeles to Ft. Worth, [fol. 33] Texas, via a motor carrier which was then and there a casual, occasional and reciprocal interstate car operator and which was not licensed in any manner by either the state of California or the Interstate Commerce Commission to carry passengers for compensation or hire and did negotiate for the sale of such transportation and did arrange for such transportation.

It is further stipulated and agreed by and between the parties hereto that the defendants were not and neither of them was at any time herein involved holding themselves, or himself, out as persons, or as a person,

who act in making any arrangement to provide, procure, furnish or arrange for transportation between points in the State of California, or in any intrastate Commerce."

The court thereupon having duly considered the said statement of facts, the same constituting the only evidence received upon the trial of said action, found both defendants guilty. Thereupon defendants and each of them made a motion in arrest of judgment upon the grounds that there were substantial defects in the complaint in that it appears upon the face thereof that the court has no jurisdiction of the offense charged therein in that it is alleged defendants sold and offered for sale, negotiated, provided and arranged for and advertised and held themselves out as persons who sold and offered to sell and negotiate, provide and arrange for the transportation of persons on an individual fare basis over the public highways of the State of California, viz.: from Los Angeles, California to Fort Worth, Texas, over a carrier which was not licensed in any manner by the State of California or the Interstate Commerce Commission to carry passengers for compensation or hire, all of which is interstate commerce and within the exclusive jurisdiction of the federal courts; and in that it appears upon the face of the complaint that the facts stated do not constitute a public offense against the laws of the State of California in that it is alleged in substance that the transportation offered to be sold and sold by the defendants was interstate commerce, and hence Section 654.1 of the California Penal Code had, and now has, no application.

The matter was thereon argued by John L. Bland, Esq., Deputy City Attorney, appearing as attorney for plaintiff, and Messrs. F. W. Turcotte and D. W. Morgan Manning, appearing as attorneys for defendants, and submitted to the court for decision. That thereafter, on the 6th day of April, 1918, the said court made and rendered its decision, denying the said motion of defendants in arrest of judgment upon the ground and for the reason that Section 654.1 of the Penal Code of the State of California did not contravene the Federal Constitution and Federal statutes enacted under the provisions of the commerce clause of the Federal Constitution.

Thereupon, on said day, the court pronounced its judgment [fol. 35] men, sentencing each defendant to pay \$250.00 fine, or be confined in the County Jail for a period of 120 days. Thereupon, on said 6th day of April, 1948, defendants and each of them filed their written notice of appeal.

Grounds of Appeal

That the court erred as a matter of law in holding that it had jurisdiction of the offense charged in the complaint and in finding defendants and each of them guilty and rendering judgment thereupon, in that it is alleged in the complaint and was proved at the trial that the defendants sold and offered for sale, negotiated, provided and arranged for and advertised and held themselves out as persons who sold and offered to sell and negotiate, provide and arrange for the transportation of persons traveling or desiring to travel from Los Angeles, California to points in the state of Texas, including Fort Worth, Texas, via private automobile operated by a casual, occasional and reciprocal interstate car operator and which was not licensed in any manner by either the state of California or the Interstate Commerce Commission to carry passengers for compensation, all of which is interstate commerce and which offense, if any, is within the exclusive jurisdiction of the Federal courts, and in that the complaint alleged and the facts showed that the transportation offered to be sold and sold by defendants was solely interstate commerce, and hence Section 654.1 of the Penal Code of the State of California attempts to [fol. 36] punish an act within the exclusive jurisdiction of the Federal courts, the Congress of the United States having fully occupied the field by appropriate legislation under the commerce clause of the Federal Constitution.

Respectfully submitted, F. W. Turcotte and DeWitt Morgan Manning, by DeWitt Morgan Manning, Attorneys for Defendants.

ORDER SETTLING STATEMENT ON APPEAL

The Court does now settle and allow the foregoing Statement on Appeal and certifies that the same is a true and correct statement of the proceedings had in the above entitled action.

Dated: Apr. 15, 1948.

Walters, Judge of the Municipal Court.

AFFIDAVIT OF SERVICE BY MAIL (C. C. P. 1913a)

STATE OF CALIFORNIA,

County of Los Angeles, ss:

L. Pencil, being duly sworn, says, that affiant is a citizen of the United States, over 18 years of age, a resident of Los Angeles County and not a party to the within action. That affiant's business address is 714 West Olympic Boulevard, Los Angeles, Calif. That affiant served a copy of the attached Appellant's Proposed Statement on Appeal by [fol. 37] placing said copy in an envelope addressed to Messrs. Ray L. Chesebro, Donald M. Redwine and John L. Bland at their office address, which is Room 260 City Hall, Los Angeles 12, California which envelope was then sealed and postage fully prepaid thereon, and thereafter was on April 7, 1948, deposited in the United States Post Office at Los Angeles, Calif. That there is delivery service by United States mail at the place so addressed, or regular communication by United States mail between the place of mailing and the place so addressed.

L. Pencil.

Subscribed and sworn to before me this 7th day of April, 1948. Gladys Weber, Notary Public in and for the County of Los Angeles, State of California.
(Seal.)

[fol. 38] IN THE APPELLATE DEPARTMENT OF THE SUPERIOR COURT, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA

Superior Court No. CR A 2386

Trial Court No. 61797

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Respondent

vs.

BERL R. ZOOK, ET AL., Defendants and Appellants

Appeal by defendants from a judgment and an order made by the Municipal Court of the City of Los Angeles, Byron J. Walters, Judge. Judgment reversed; appeal from order dismissed.

For Appellant—DeWitt Morgan Manning and F. W. Tarcotte.

For respondent—Ray L. Chesebro, City Attorney, Donald M. Redwine, Assistant City Attorney, and John E. Bland, Deputy City Attorney.

OPINION—Filed July 21, 1948

Defendants were convicted on a charge of violating Penal Code section 654.1, and appeal. In brief, that section, added to the Code in 1947, makes it unlawful for any person to sell or offer for sale or to negotiate for sale of, transportation of persons on an individual fare basis over public highways of the state, unless the transportation is to be done by a carrier authorized either by the state Public Utilities Commission or by the Interstate Commerce Commission. The complaint charged a violation of this section by selling [fol. 39] transportation to two persons from Los Angeles to Forth Worth, Texas. After a demurrer had been overruled, the case was submitted to the trial court on a stipulation of facts showing the complaint to be true, and that the transportation was in fact by motor carrier.

The point made on appeal is that the acts charged and proved against defendants were done in interstate commerce and that for that reason and because of certain Federal legislation, the state law cannot be applied to those acts. We find this contention well founded. The Federal legislation in question (Part II, Interstate Commerce Act, U.S.C.A., Title 49, secs. 301-327) is reviewed in *People v. Van Horn* (1946), 76 Cal. App. 2d 753, and for details regarding it and the order of the Interstate Commerce Commission which put some of it into effect, we refer to that case. The general effect of the Federal law is that it is unlawful for anyone to sell or offer for sale such transportation by motor carrier as is here in question unless he is licensed as a broker by the Interstate Commerce Commission, or is agent for an authorized carrier, and that the transportation sold shall be done only by a carrier authorized by the Interstate Commerce Commission (U.S.C.A., Title 49, sec. 311(a)).

There is a field of local regulation of interstate commerce which the state may enter, in the absence of action by Congress, and in *California v. Thompson* (1941), 313 U. S. 109, [fol. 40] 85 L. ed. 1219, it was held that the particular sub-

ject matter here involved is in that field and that no Congressional action affecting it was then operative. But since that decision, action by the Interstate Commerce Commission has operated to apply the Congressional action to this subject, as was held in *People v. Van Horn*, *supra*; and in our own unpublished decision in *People v. Edmondson* (1946), L. A. Cr. A. 2160. Since the United States Supreme Court denied certiorari in our case we assume they approved our holding. We now have, therefore, a case where there is Federal legislation occupying the same field as the state law.

Respondent concedes and even demonstrates that under the circumstances of this case the Federal law and section 654.1, Penal Code, forbid and punish the same acts, but contends that this is permissible and does not invalidate the state law, even as applicable to acts in interstate commerce. If we look to the rule in California for determining whether a city ordinance is in conflict with a state law and for that reason void, the city being limited by our Constitution to such police regulations "as do not conflict with general laws," we find it established that "there is a conflict where the ordinance and the general law punish precisely the same acts." (*In re Sic* (1887), 73 Cal. 142, 149; *In re Bell* (1942), 19 Cal. 2d 488, 498; *Pipoly v. Benson* (1942), 20 Cal. 2d 366, [fol. 41] 371-1; *In re Portnoy* (1942), 21 Cal. 2d 237, 240; *People v. Commons* (1944), 64 Cal. App. 2d (Supp.) 925, 929.) Respondent contends that this is not the rule applicable as between State and Federal legislation, but on review of the authorities we conclude that the rule in interstate commerce matters has substantially the same effect as that above stated. Of such a case, the United States Supreme Court said long ago: "This legislation [enacted by Congress] covers the same ground as the New York Statute, and they cannot co-exist." (*New York v. Compagnie Generale Transatlantique* (1883), 107 U. S. 59, 63, 27 L. Ed. 383, 385.) In *Charleston etc. R. Co. v. Farnville Furn. Co.* (1915), 237 U. S. 597, 604, 59 L. Ed. 1137, 1140, where it was urged that a state law regarding payment of claims for overcharges of freight was in aid of interstate commerce, the court said: "When Congress has taken the particular subject matter in hand, coincidence is as ineffective as opposition." This quotation was quoted with apparent approval in *Gloverleaf Butter Co. v. Patterson* (1942), 315 U.

S. 148, 169, 86 L. ed. 754, 770, and in *Bethlehem Steel Co. v. New York Labor Rel. Bd.* (1947), 330 U. S. 767, 775, 91 L. ed. 1234, 1247. In *Pennsylvania R. Co. v. Public Service Comm.* (1919), 250 U. S. 566, 569, 63 L. ed. 1142, 1145, the court said: "But when the United States has exercised its exclusive powers over interstate commerce so far as to take possession of the field, the states no more can supplement its [fol. 42] requirements than they can annul them." Again in *Missouri P. R. Co. v. Porter* (1927), 273 U. S. 341, 346, 71 L. ed. 672, 675, the court said, referring to the power of Congress over interstate commerce: "Its power to regulate such commerce and all its instrumentalities is supreme; and, as that power has been exerted, state laws have no application. They cannot be applied in coincidence with, as complementary to or as in opposition to, federal enactments which disclose the intention of Congress to enter a field of regulation that is within its jurisdiction." In *Oregon-Washington R. & Nav. Co. v. Washington* (1926), 270 U. S. 87, 101, 70 L. ed. 482, 488, the court said of such local regulations as we have here: "the state may exercise its police power until Congress has by affirmative legislation occupied the field by regulating interstate commerce and so necessarily has excluded state action." In *Northern Pac. R. Co. v. Washington* (1912), 222 U. S. 370, 378, 56 L. ed. 237, 239, the court held that an act of Congress regulating hours of labor in interstate railway transportation, even though it was not to take effect until a year after its passage, prevented the state from enforcing similar regulations in the meantime, saying: "... as the enactment by Congress of the law in question was an assertion of its powers by the fact alone of such manifestation that subject was at once removed from the sphere of operation of the authority of the state." A similar declaration appears in *People v. [fol. 43] Marine Products Co.* (1947), 77 Cal. App. 2d (Supp.) 929, 933.

Against our conclusion already stated respondent cites *United States v. Lanza* (1922), 260 U. S. 377, 67 L. ed. 344, *Cross v. North Carolina* (1889), 132 U. S. 131, 33 L. ed. 287, and other cases holding that the same act or acts may be an offense against both state and nation and punishable by each. In the *Lanza* case, the 18th Amendment was involved, which, as the court pointed out, expressly authorized its enforcement concurrently by state and nation. The other

cases do not concern interstate commerce and are sufficiently distinguished in *Southern R. Co. v. Railroad Comm.* (1914), 236 U. S. 439, 445, 446, 59 L. ed. 661, 665. There it appeared that the State of Indiana had a statute nearly the same as one passed by Congress, requiring grab irons and hand holds on freight cars and imposing a penalty for violation. A proceeding was brought against the railroad company under the Indiana statute to recover the penalty, but the United States Supreme Court held the statute invalid, after considering the same argument made here. Referring to *Cross v. North Carolina*, *supra*, and to the rule declared in it, the court said: "But, upon an analysis of the principle on which it is founded, it will be found to relate only to cases where the act sought to be punished is one over which both sovereignties have jurisdiction." The court further said: "But the principle that the offender may, for one [fol. 44] act, be prosecuted in two jurisdictions, has no application where one of the governments has exclusive jurisdiction of the subject-matter, and therefore the exclusive power to punish." Such is the case here where Congress, in the exercise of its power to regulate interstate commerce, has legislated as to the appliances with which certain instrumentalities of that commerce must be furnished in order to secure the safety of employees. Until Congress entered that field, the states could legislate as to equipment in such manner as to incidentally affect, without burdening, interstate commerce. But Congress could pass the safety appliance act only because of the fact that the equipment of cars moving on interstate roads was a regulation of interstate commerce. Under the Constitution the nature of that power is such that, when exercised, it is exclusive, and *ipso facto* supersedes existing state legislation on the same subject." The first of these quotations was copied with approval in *United States v. Lanza*, *supra*, at 260 U. S. 384, 67 L. ed. 318.

In *State v. Harper* (1914), 48 Mont. 456, 138 Pac. 495, 51 L.R.A. (N.S.) 157, 159, the court held invalid a state law substantially like the Mann Act, prohibiting the transportation of women into the state for immoral purposes, and discussing the argument that the same act may be an offense against both the United States and the state, the court said: "This might be true in some instances, but here we [fol. 45] are confronted with the fact that, so far as the

regulation of interstate commerce is concerned, the states have expressly surrendered the entire subject to the general government, and that, when the general government sees fit to exercise the powers delegated and surrendered to it by the states, the state is precluded from saying that the subject, or any matter connected therewith, is under the concurrent control of the two sovereignties.

We conclude, therefore, that section 654.1, Penal Code, cannot be validly applied to transportation in interstate commerce, and since the complaint herein expressly limits itself to such transportation, it states no offense punishable under the section and the demurrer should have been sustained.

The judgment is reversed and the cause remanded to the Municipal Court with directions to sustain the demurrer to the complaint and enter judgment dismissing the action. The appeal from the order in arrest of judgment is dismissed.

Dated July 21, 1948.

Shaw, Presiding Judge.

Leonour. Bishop, Judge.

[fol. 46]

[File endorsement omitted]

[fol. 47] IN THE APPELLATE DEPARTMENT OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF LOS ANGELES

Superior Court No. CR A 2386. Trial Court No. 61,797

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Respondent;

VS.

BEEL B. ZOOK, et al., Defendants and Appellants

On Appeal from the Municipal Court of the City of Los Angeles, County of Los Angeles, State of California

JUDGMENT--Filed July 21, 1948

This cause having been argued and submitted and fully considered, judgment is ordered as follows:

It is Ordered and Adjudged that the judgment made and entered in the Municipal Court of the City of Los Angeles, County of Los Angeles, State of California, in the above entitled cause be and the same is hereby reversed and the cause remanded to the Municipal Court with directions to sustain the demurrer to the complaint and enter judgment dismissing the action. The appeal from the order in arrest of judgment is dismissed.

-Clerk's Certificate to foregoing paper omitted in printing-

[fol. 48] -[File endorsement omitted.]

[fol. 49] IN THE APPELLATE DEPARTMENT OF THE SUPERIOR
COURT OF COUNTY OF LOS ANGELES

[Title omitted]

PETITION FOR REHEARING—Filed July 27, 1948

To the Appellate Department of the Superior Court,
County of Los Angeles, State of California:

Comes now the above named plaintiff and respondent and respectfully petitions the Honorable Court to vacate the decision and judgment heretofore rendered in the above entitled cause, and to grant a rehearing thereon.

Such petition is based upon the following grounds:

(1) That the court erred in holding that the Congress had occupied the entire field of regulation.

(2) That the court erred in holding that the State could not punish for acts also punishable under the federal statutes.

(3) That the court erred in holding that the statute trespassed upon the power of Congress.

Argument

As shown by the record, the law affects a transaction wholly occurring in the State of California. The law does [fol. 50] not prevent or in any manner interfere with the transportation of persons in interstate commerce. Neither does it prevent a so-called casual carrier from securing

passengers. Undoubtedly, opportunity to utilize the services of persons engaged in selling such transportation facilities the operation of casual carriers by enabling them to secure a load of passengers more easily or more quickly. The ability to use such agents likewise tends to increase the violation of the federal law by such casual carriers, most of whom were found by the Interstate Commerce Commission to be regularly engaged in the transportation of passengers.

The court relies upon the decision of the District Court of Appeal in *People v. Van Horn*, 76 Cal. App. (2d) 753. However, it is to be noted that in such decision the court held, that by its own terms the statute in that case provided that it should not be effective if the federal government undertook to regulate such transportation. The decision was primarily based upon the construction of a state statute not involving a federal question. The decision in *People v. Edmondson* more than implies that such was the effect of the last amendment to the Act.

Certainly such cases cannot be deemed controlling in the case of a statute having no resemblance to the statute involved in those cases.

The court also relies upon an implied approval of its [fol. 51] decision in the *Edmondson* case by the denial of petition for writ of certiorari by the United States Supreme Court.

In view of the well established rule of the United States Supreme Court that, if a decision is based upon an interpretation of a state law not involving a federal question the court will not consider the federal question, it appears to us that the court in the instant case attaches undue weight to the action of the United States Supreme Court. If our recollection be correct, such court, during the present term, has said that denial of certiorari is not to be considered as approval of the decision of a lower court. Unfortunately, the decision in the instant case was handed down while the writer hereof was on vacation, and it was only by reason of fortuitous circumstances that he returned in time to prepare any petition for rehearing which might be deemed worthy of consideration by the court, and for that reason he has not had the opportunity to verify his recollection and furnish the court with the citation to the case.

The court has cited a number of cases which, upon careful analysis, are found to be inapplicable to the case at bar.

In *Charlesworth & Western Carolina R. Co. v. Vannville Furniture Co.*, 237 U. S. 597, 59 L. Ed. 1132, the court pointed out: that the state law was not contrived as an aid to federal policy, but to enforce a state policy differently [fol. 52] conceived. The law involved in the instant action was contrived to aid in the federal policy as well as in a state policy, that is to say, to prevent loss and injury to persons who patronized the so-called travel bureaus. Taking into consideration such language, it follows that what is thereafter said in the decision is directly in conflict with *Parker v. Brown*, cited in our original brief.

Pennsylvania R. Co. v. Public Service Comm., 250 U. S. 566, 63 L. Ed. 1442, involved the actual movement of trains in interstate commerce. As above pointed out, the California statute does not affect the movement of interstate commerce. The transactions prohibited are all entirely consummated in the State of California. The carrier and also the purchasers of tickets may proceed merrily on their way without any interference by the State.

Missouri Pac. R. Co. v. Porter, 273 U. S. 341, 71 L. Ed. 672, like the *Pennsylvania Railroad Company* case, *supra*, directly affected the rights of interstate carriers, in that it required that interstate bills of lading covering goods moving in interstate and foreign commerce carry provisions different from those prescribed by the Interstate Commerce Commission. In other words, the *Missouri Pacific* case presented a direct conflict between federal and state authority instead of concurring exercise of a common policy.

Probably *Oregon-Washington R. & Nav. Co. v. Washington*, 270 U. S. 7, 70 L. Ed. 482, comes closer to the situation [fol. 53] than created by the California statute than any of the other cases cited in the opinion of the court. This case is easily distinguishable for the reason that the order involved in that case *prohibited the movement* of interstate commerce into the State of Washington.

At the risk of being charged with unnecessary repetition, we again point out that the California statute does not in any manner interfere with the movement of interstate traffic. Every case cited by the court involved the movement of goods in *lawful interstate commerce*, that is, commerce lawful to engage in under federal law.

We maintain that there is a great difference between a law which has the effect of interfering with the free movement of commerce permitted under federal statute and a law which only incidentally affects interstate commerce in any degree, and such incidental interference is only with unlawful commerce. As was said in *Kelly v. Washington*, 302 U. S. 1, 82 L. Ed. 3: "These are not proper subjects of commerce." Such interference conforms with the policy of Congress.

The case of *Bob-Lo Excursion Co. v. Michigan*, decided February 2, 1948, — U. S. —, 92 L. Ed. (Adv. Sheets) 339, appears to be much nearer the point than do any of the cases cited in the opinion of the court. Certainly foreign commerce is much more completely subject to the exclusive power of Congress than is commerce between the states. In that case the conviction of a carrier under a state law for [fol. 54] violation of such law in foreign commerce was withheld. The statute involved therein acted directly upon the matter of transportation of persons.

On the contrary the statute in the instant case only incidentally affects interstate commerce. The transactions involved are essentially local in their nature.

We are firmly convinced that the cases cited in our original brief, when considered with the decision in the *Bob-Lo case*, supra, impels the conclusion that the validity of our State statute should be sustained.

We submit that the decision and judgment of the court heretofore rendered be vacated and set aside, and that the court either grant a rehearing in this cause or enter a new judgment sustaining the action of the lower court.

Respectfully submitted, Ray L. Chesebro, City Attorney;
Donald M. Redwine, Assistant City Attorney;
John L. Bland, Deputy City Attorney, Attorneys
for Respondent.

[fol. 55] AFFIDAVIT OF SERVICE BY MAIL (C. C. P. 1013a)

STATE OF CALIFORNIA,

County of Los Angeles, ss:

Dorothy Simpson, being first duly sworn, says: That affiant is a citizen of the United States and a resident of the County of Los Angeles; that affiant is over the age of

eighteen years and is not a party to the within and above entitled action; that affiant's business address is 260 City Hall, Los Angeles, California; That on the 27th day of July, 1948, affiant served the within Petition for Rehearing on the appellants in said action by placing a true copy thereof in an envelope addressed to the attorneys of record for said appellants, at the office address of said attorneys, as follows: DeWitt Morgan Manning and F. W. Turcotte, Attorneys at Law, 438 Petroleum Bldg., Los Angeles 15, California and by then sealing said envelope and depositing the same, with postage thereon fully prepaid, in the United States Postoffice at Los Angeles, California, where is located the office of the attorney for the person by and for whom said service was made.

That there is delivery service by United States mail at the place so addressed and there is a regular communication [fol. 56] by mail between the place of mailing and the place so addressed.

Dorothy Simpson.

Subscribed and sworn to before me this 27th day of July, 1948. Kenneth Williams, Notary Public in and for the County of Los Angeles, State of California. (Seal.)

[Title omitted.]

[fol. 57] IN THE APPELLATE DEPARTMENT OF THE SUPERIOR COURT OF COUNTY OF LOS ANGELES

[Title omitted]

ORDER DENYING REHEARING—Filed August 3, 1948

The petition of appellants for a rehearing after judgment of this court on appeal, in the above entitled case, having been filed, and having been duly considered,

Said petition is hereby denied.

Dated August 3, 1948.

By the Court, Shaw, Presiding Judge; Bishop, Judge.

[File endorsement omitted.]

[fol. 58] IN THE MUNICIPAL COURT OF THE CITY OF LOS ANGELES

[Title omitted]

CERTIFICATE OF JUDGE OF TRIAL COURT

I hereby certify that I am one of the judges of the Municipal Court of the City of Los Angeles, County of Los Angeles, State of California, and that as judge of said court I heard, considered and decided the questions of law raised by the demurrer of the defendants to the complaint in the above entitled cause.

I further certify that the only question of law raised or argued by the defendants upon the hearing on such demurrer, and the only question of law considered by the court on such demurrer, was the question of whether the section of the Penal Code, under which the prosecution was laid, was invalid by reason of the fact that the act charged to have been committed by the defendants was an act the commission of which was prohibited by federal statute, and that [fol. 59] by reason thereof the State of California is without jurisdiction to enact any statute which prohibited such act or punished the commission thereof, and because such law was applicable to interstate commerce in a field in which the federal government had already legislated by making such act illegal.

I further certify that, in reply to the argument of the defendants, the People of the State of California urged at all times that the State statute was a valid exercise of the police power of the State; that it did not prohibit or interfere with the movement of interstate commerce; that its only effect was to punish an act wholly committed in the State of California; that the effect of such law upon interstate commerce was incidental only; that such effect as there was, was only to prohibit an act which was already prohibited and made penal by the federal law, and that such statute not only did not interfere or conflict with the regulation by Congress of interstate carriers by motor vehicles, but it tended to carry out the policy of Congress by assisting in the suppression of acts and conduct wholly prohibited by federal law.

I further certify that no question of validity of such statute by reason of any provision of the Constitution of

the State of California was urged by the defendants on [fol. 60] considered by the court.

Louis W. Kauffman, Judge.

Attest: W. Otten, Clerk of the Municipal Court, City of Los Angeles, State of California.

[fol. 61] IN THE MUNICIPAL COURT OF THE CITY OF LOS ANGELES

[Title omitted]

CERTIFICATE OF JUDGE OF TRIAL COURT

Whereby certify that I am one of the judges of the Municipal Court of the City of Los Angeles, County of Los Angeles, State of California, and as judge of said court presided at the trial of the above entitled and numbered cause.

I further certify that at all times during the trial of said action, upon the motion for new trial and motion in arrest of judgment, the defendants urged that the statute under which they were charged was void and unconstitutional upon the sole ground that the statute under which such prosecution was being had was an attempt by the State of California to punish for the commission of an act in interstate commerce, which said act was already prohibited by the federal government and punishable under the provisions [fol. 62] of the federal statute. The People of the State of California, in reply to the claim of the defendants, urged at all times that said State statute constituted a valid exercise of the police power of the State; that the act prohibited by such statute was wholly conceived and completed within the State of California; that such statute did not interfere with the movement of either lawful or unlawful interstate commerce; that any effect upon interstate commerce was wholly coincidental and prohibited only the commission of acts which were also prohibited by federal law, and that such statute did not conflict with any federal law or in any manner interfere with the regulation of interstate commerce by the federal government, but that on the other hand said statute tended to aid and assist in the effectuation of the policy of Congress and the federal government.

I further certify that no question concerning the validity of such statute by reason of the provisions of the Constitution of the State of California was raised by the defendants.

or considered by the court during the trial of said cause, and that the only question of law involved was the federal question hereinbefore stated.

Byron J. Walters, Judge.

Attest: Urban F. Emme, by H. R. Plough, Deputy Clerk,
Clerk of the Municipal Court of Los Angeles, California.
Aug. 18, 1948.

[fol. 63] IN THE APPELLATE DEPARTMENT OF THE SUPERIOR
COURT OF COUNTY OF LOS ANGELES

[Title omitted]

PRACICE FOR RECORD—Filed August 3, 1948

To the Clerk of the above named Court:

You are hereby requested and instructed to prepare and transmit to the Clerk of the Supreme Court of the United States a full and complete copy of the papers and files constituting the record of the above named court upon the appeal in the the above entitled cause, including the following papers:

1. The complaint.
2. Defendants' demurrer to the complaint.
3. The judgment of the Municipal Court.
4. Statement on Appeal.
5. Notice of Appeal.
6. The docket of the Clerk of the Municipal Court.
7. The Opinion and Order of the Appellate Department of the Superior Court dated July 21, 1948.
8. The respondent's Petition for Rehearing filed July 27, 1948.
- [fol. 64] 9. The Order of the court, dated August 3, 1948, Denying Rehearing.
10. Statement of the Trial Court.
11. Copy of Order of the Presiding Judge of the Appellate Department of the Superior Court Staying Proceedings in said cause.
12. This Praceipe.

Ray L. Chesebro, City Attorney, Donald M. Redwine, Assistant City Attorney; John L. Bland, Deputy City Attorney, Attorneys for Respondent.

[File endorsement omitted.]

[fol. 65] IN THE APPELLATE DEPARTMENT OF THE SUPERIOR
COURT OF COUNTY OF LOS ANGELES

[Title omitted]

ORDER STAYING REMITTITUR AND EXECUTION—Filed August
3, 1948

Upon application of the People of the State of California, respondent in the above entitled cause, by Ray L. Chesebro, City Attorney, Donald M. Redwine, Assistant City Attorney, and John L. Bland, Deputy City Attorney, their counsel, for a stay of remittitur and stay of execution of the judgment of this court, made and entered the 21st day of July, 1948, in said cause, to enable said People of the State of California to apply for and obtain a writ of certiorari from the Supreme Court of the United States.

It Is Hereby Ordered that issuance and transmission of the remittitur of this court, and the order and judgment of this court in the above entitled and numbered action be, and the same is, hereby stayed until October 21, 1948.

Dated this 3rd day of August, 1948.

Shaw, Presiding Judge of the Appellate Department
of the Superior Court.

[fol. 66] [File endorsement omitted.]

[fol. 67] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 68] SUPREME COURT OF THE UNITED STATES, OCTOBER
TERM, 1948

No. 355

THE PEOPLE OF THE STATE OF CALIFORNIA, Petitioner,

vs.

BERT B. ZOOK and WILLIAM K. CRAIG

ORDER ALLOWING CERTIORARI—Filed December 6, 1948

The petition herein for a writ of certiorari to the Superior Court of Los Angeles County, Appellate Department, State of California, is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.